United States Bankruptcy Court
Eastern District of Michigan
Southern Division-Flint

In re:
William Daniel Peele, Case No. 03-21480-WS
Debtor. Chapter 7
_____/

Ruby Blanton Peele,
Plaintiff,

v. Adv. No. 03-2101

William Daniel Peele,
Defendant.
_____/

Opinion

I. Facts

This matter is before the Court on Plaintiff, Ruby Blanton Peele's, objection to discharge of debt under 11 U.S.C. § § 523(a)(5) and 523(a)(15) . The Court has concluded the debt is non-discharge able under the former and therefore makes no finding on the latter.

Plaintiff and Defendant, ("Debtor") William Daniel Peele, were married on November 8, 1969. All children born of the marriage are adults. The parties separated on August 4, 2000, and on July 12, 2001, a consent order was entered in the State of North Carolina dividing the marital property ("Consent Order"). On March 4, 2002, a contempt order ("Contempt Order") was entered in attempt to bring Debtor into compliance with the July 2001 Consent Order. On April 11, 2003, Debtor filed for relief under Chapter 7. On July 14, 2003, Plaintiff filed this complaint objecting to the discharge of debt with relation to the Consent Order. Debtor contests both the non-

dischargeablity of the debt and the underlying amount.

Under the Consent Order, Debtor owed Plaintiff three hundred dollars ($300) a month for six years, constituting Plaintiff's portion of Debtor's retirement benefits. Plaintiff would receive total payments amounting to twenty-one thousand six hundred dollars ($21,600). Because there was a penalty for early withdrawal of the funds from the retirement account, Debtor was paying Plaintiff from his own monies, thus assuring him a larger payoff of his retirement account if he retired after 2007. Debtor paid three monthly payments of three hundred dollars ($300), with the remainder totaling twenty thousand seven hundred dollars ($20,700).

Under the Consent Order, Debtor was also to pay Plaintiff's health care premium for three years, ending July 2004. Debtor quit his employment in August 2001, causing Plaintiff's health care benefits that he had received through his employment to terminate on October 1, 2001. Plaintiff stated that Debtor owed four thousand nine hundred sixty eight and 50/100 dollars ($4,968.50) for health insurance and seven hundred forty-four and 85/100 dollars ($744.85) for unpaid medical bills which accumulated before Plaintiff was aware that her coverage had ended. These amounts were uncontested.

Under the Consent Order, Debtor was also ordered to maintain dental coverage for Plaintiff's benefit. Plaintiff claims a debt of eight hundred five dollars ($805) for dental coverage, but did not support the figure or provide an explanation of how she calculated the amount. Debtor admitted that he had not maintained the dental policy and claimed that the premium was fifteen dollars ($15) a month, totaling five-hundred forty dollars ($540) for three years. Because the amount was contested, and Plaintiff did not provide evidentiary support for her figure, only the uncontested amount of five hundred forty dollars ($540) is in controversy.

Under the Consent Order, Debtor was also ordered to make the car payments on the Plaintiff's car until the car was paid off. The car was to remain in Plaintiff's possession. Plaintiff testified that prior to Debtor paying off the loan on the car, she was made aware that Debtor was delinquent on payments , therefore, she made three payments on the car totaling four-hundred ninety-five dollars ($495). Plaintiff only had evidentiary support for two of the payments, totaling three-hundred thirty dollars ($330). Debtor claimed that he paid the car off in full, and if any payments were made by Plaintiff prior to that, he assumed that the money would have been refunded to her by the holder of the note. Debtor testified that he had attempted to gain access to the record regarding the payments, but was unsuccessful. Because Plaintiff proved that she made three-hundred thirty dollars ($330) in payments, and there was no indication that any of the money was returned to her, the amount in controversy is three-hundred thirty dollars ($330).

Under the Consent Order, Debtor was further obligated to pay car insurance and homeowner's insurance for Plaintiff until March 2002. Debtor claimed that the combined payment was fifty-four dollars ($54) per month and that he paid such through November 2001. Plaintiff claims that Debtor owes four hundred eighty-two dollars ($482), but does not break down this figure or support it with evidence. Plaintiff presented evidence of two payments that she made totaling two-hundred sixty-eight dollars ($268). The payments from November 2001 to March 2002, according to Debtor, would have been two-hundred seventy dollars ($270). Because two hundred seventy dollars ($270) is the highest amount supported by evidence, it is considered the amount in controversy.

The Contempt Order provided for attorney fees for Plaintiff in the amount of four hundred fifty dollars ($450). Although the pleadings indicated otherwise, Plaintiff conceded at trial that was the proper amount owed for that item.

II. Discussion

Under Section 523(a)(5)(B), a debt to a former spouse is not dischargeable if it is "a liability designated as alimony, maintenance, or support, [or] unless such liability is actually in the nature of alimony, maintenance, or support." 11 U.S.C. § 523(a)(5)(B); *Sorah v. Sorah* (*In re Sorah*), 163 F.3d 397, 400 (6th Cir. 1998). Where the state court has specifically labeled the obligation as support, the obligation is conclusively presumed to be a support obligation. *Id.* at 401. Where it is not so specifically labeled, this Court engages with a three-prong analysis to determine if Section 523(a)(5) applies.

Initially, The Court examines:

> traditional state law indicia that are consistent with a support obligation. These include, but are not necessarily limited to[:] (1) a label such as alimony, support, or maintenance[;] (2) a direct payment to a former spouse, as opposed to the assumption of third-party debt[;] and (3) payments that are contingent upon such events as death, remarriage, or eligibility for Social Security benefits. *Sorah*, 163 F.3d at 401; *McNamara v. Ficarra* (*In re McNamara*), 275 B.R. 832, 836 (E.D. Mich. 2002).

Not all obligations which are in the nature of support are labeled as such. This requires that the bankruptcy court, "look behind the award that is made under state law and make an independent factual inquiry to determine whether the award is actually in the nature of support." *Goans v. Goans* (*In re Goans*), 271 B.R. 528, 533 (E.D. Mich. 2001), quoting *Harvey v. McClelland* (*In re McClelland*), 247 B.R. 423, 426 (Bankr. N.D. Ohio 2000). To determine whether obligations constitute support, the Court first must determine whether the state court or parties intended to create such an obligation. *Long v. Calhoun* (*In re Calhoun*), 715 F.2d 1103, 1109-10 (6th Cir. 1983). Some relevant factors to look at with regard to intent include:

> the nature of the obligations assumed (provision of daily necessities indicates support); the structure and language of the parties' agreement or the court's decree; whether other lump sum or periodic payments were also provided; length of the

> marriage; the existence of children from the marriage; relative earning powers of the parties; age, health and work skills of the parties; the adequacy of support absent the debt assumption; and evidence of negotiation or other understandings as to the intended purpose of the assumption. *Id*. at 1108 n 7.

Second, such obligation must have the effect of actually providing necessary support. Third, once the first two prongs are met, the court must determine if such an obligation is so excessive that it is unreasonable under the conventional understanding of support. *Id*. at 1109-1110. Fourth, if the amount is determined to be unreasonable, the amount of the obligation will be dischargeable to the extent necessary to comply with the standards of federal bankruptcy law. *Id.*

As to the retirement benefits, testimony shows that instead of receiving her portion of the full benefit when Debtor retired, Plaintiff was given a monthly payment representing a diminished portion of the benefit because of her present need for the money. A letter from Debtor's attorney in negotiating the property distribution settlement stated that support was included in the six-year, monthly three hundred dollar ($300) payment proposal. It is apparent from the structure of the settlement, testimony from Plaintiff and testimony from her attorney, Thomas Hicks, who worked on the settlement, and the letter from Debtor's former attorney, that the three-hundred dollars ($300) per month was in the nature of a support payment.

The medical insurance, unpaid medical bills, dental insurance, car insurance, and homeowners insurance provisions were designed for Debtor to fulfill these obligations for a set period of time. There was no monetary value afforded to each obligation. Hicks testified that these provisions were set up for Plaintiff's support. Absent these payments, Hicks testified that Plaintiff did not have adequate money to meet her needs and that it was the intention of all parties that these obligations were for Plaintiff's support. Hicks testified that the Consent Order was structured appropriate to Plaintiff's monetary problems. It thus appears from the structure of the settlement and from the

testimony of Hicks that the benefits were in the nature of support.

Further bolstering the nature of the payments as support are the following: (1) Plaintiff and Debtor were married for over thirty years; (2) Debtor was the primary breadwinner in the marriage; and (3) Plaintiff is disabled and cannot engage in gainful employment. Also, Plaintiff's income at the time of the Consent Order was approximately six hundred sixty dollars ($660) per month totaling approximately seven thousand nine hundred twenty dollars ($7,920) per year from Social Security Disability. Plaintiff's current income is approximately seven hundred fifty dollars ($750) per month totaling nine thousand dollars ($9,000) per year from Social Security Disability. Because of her disability, she has high medical bills. At the time of the Consent Order, Debtor was working for the State of North Carolina, earning between thirty two thousand dollars ($32,000) and thirty three thousand dollars ($33,000) per year. Debtor voluntarily quit his job in August 2001 and moved to Michigan. Debtor testified that he left North Carolina because Plaintiff created problems for him at his job, however, he presented no evidence to support that theory. Debtor testified that he is currently working part-time because he cannot find full-time employment. Debtor testified that he works five days per week making one hundred dollars ($100) per day, which totals twenty six thousand dollars ($26,000) per year. Thus, examining the relative earning powers of the parties, length of marriage, testimony regarding the negotiations and structure of the settlement, health of the parties, and adequacy of support without the debt assumption, The Court concludes that these obligations constituted support.

Debtor also argues that the attorney fees are not in the nature of support. The attorney fees in a divorce judgment are generally found to be in the nature of support. *See Pauly v. Sprong* (*In re Sprong*), 661 F.2d 6 (2d Cir. 1981); *Goans*, 271 B.R. at 534. Attorney fees stemming out of a

contempt order for failure to make support payments have also been found to be in the nature of support and, thus, nondischargeable. *Van Aken v. Van Aken* (*In re Van Aken*), 320 B.R. 620, 629-30 (6th Cir. 2005). This Court agrees with that precedent..

Because the other tests are met, this Court must further determine whether Debtor has demonstrated that the obligation is "unreasonable in light of the debtor's financial circumstances." *Sorah*, 163 F.3d at 402. The total amount of debt in controversy supported by evidence is twenty eight thousand three and 35/100 dollars ($28,003.35). Debtor did not prove, or even argue at the hearing, that the obligation is unreasonable in light of his financial circumstances. The Court therefore concludes that the various noted obligations, and thus the entire debt, are nondischargeable under Section 523(a)(5). That concluded, this Court need not examine whether the debt is dischargeable under Section 523(a)(15).

__/s/_____
Walter Shapero
U.S. Bankruptcy Judge

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